IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

**JUDGMENT**

Mst. Sukh Kanwar & anr. Vs. Dhan Singh & others

**S.B.CIVIL MISC. APPEAL NO.665/1994**

Against the award dated 01.09.1994 made by the Motor Accidents Claims Tribunal, Jalore in Claim Case No.23/1990.

Date of Judgment : 14th May 2007

PRESENT

**HON'BLE MR.JUSTICE DINESH MAHESHWARI**

Mr.Babulal Darji for Mr.J.M.Bhandari for the appellants
Mr.Heera Singh for Mr.Pradeep Shah for the respondents.

**BY THE COURT:**

The claimants have preferred this appeal being aggrieved of the award dated 01.09.1994 made by the Motor Accidents Claims Tribunal, Jalore in Claim Case No.23/1990 whereby the Tribunal has disbelieved their case that death of Mohan Singh, husband of the claimant No. 1 and father of the claimant No. 2, resulted from a vehicular accident; and has rejected their claim application.

The claimant-appellants made the claim for compensation against the persons related with a tractor

bearing registration No.RJW 2652; and the particulars of, and relating to, the accident were stated in paragraph-10 of the claim application on the basis of, and with reference to, an FIR lodged by Manohar Singh (brother of the deceased Mohan Singh) on 19.10.1989 with Police Station, Bagra wherein it was stated that on 16.10.1989 in the night at about 8:00–8:30 p.m., (the deceased) Mohan Singh, Devi Singh and Chhail Singh were taking meal (at the house of Mohan Singh at village Dudsi) when Dhan Singh son of Kesar Singh approached and took Mohan Singh and Chhail Singh with him; then, in the morning on 17.10.1989 at about 4:00 – 4:30 a.m. Dhan Singh came in a jeep and informed that Mohan Singh was taken unconscious for excessive consumption of liquor and would be required to be taken to Jalore; that they reached Bagra in jeep with Dhan Singh; that Padma Ram was holding Mohan Singh who was found speechless with his body temperature having fallen down; that Mohan Singh was taken to Jalore in the jeep where the doctor examined and declared him dead; thereafter the doctor informed the police and conducted post mortem; that later however, upon enquiry from Chhail Singh and Padma Ram, it was found that Dhan Singh, Chhail Singh and the deceased Mohan Singh had gone to the well of Shaitan Singh and then Shaitan Singh, while giving his tractor to Padma Ram Kumahar sent with him Dhan Singh and

Mohan Singh to Siyana to bring cement and Chhail Singh also accompanied; that all the four persons reached Siyana and were coming back after loading cement bags and iron rods in tractor-trailer; that Dhan Singh was driving and Mohan Singh and Padma Ram were sitting on the tractor whereas Chhail Singh was sitting in the trailer; that Dhan Singh consumed liquor at Siyana; that while coming back from Siyana to Dudsi, Dhan Singh was driving the tractor rashly and negligently; that at about 20 paces before the main road towards Dudsi, Mohan Singh fell down and Chhail Singh shouted for a halt but, by that time, a tyre of the trailer had run over Mohan Singh; that tractor was halted about 20 ft. ahead and Mohan Singh was not in a position to sit or speak; that Mohan Singh died on being run over by the tyre of the trailer; and that, according to the information given by Padma Ram and Chhail Singh, the accident occurred at about 2 O'clock in the night.

The claimants averred that upon the said report made by Manohar Singh, a challan had been filed against the non-applicant Dhan Singh for offence under Section 304A IPC and the said case was pending. The claimants submitted that the victim Mohan Singh expired due to grievous injuries received in the accident aforesaid and asserted liability of the non-applicant No.1 Dhan Singh as driver, of the non-applicant No.2 Shaitan Singh son of Ranjeet Singh as registered owner, and

that of the non-applicant No.3 Shaitan Singh son of Nahar Singh as transferee owner of the said tractor. The claimants further stated that the name of Insurance Company was not known and shall be stated later; however, it is not in dispute that no such Insurance Company was impleaded.

For quantification, the claimants asserted that the deceased was earning about Rs.25,000/- per annum in agriculture and for his death the entire farming was ruined and sought compensation for pecuniary loss in the sum of Rs.7,75,000/- and claimed another Rs.25,000/- towards non-pecuniary loss.

The non-applicants Nos.1 and 2 in their joint reply put the claim to contest denying the occurrence at all. The said non-applicants asserted that neither the alleged incident occurred nor Mohan Singh died due to any such accident; and further asserted that Mohan Singh was a drunkard and that even in the report made by Devi Singh, brother of claimant Sukh Kanwar, excessive consumption of liquor was stated as the cause of death of Mohan Singh. The non-applicants asserted that the deceased did not receive any accident injury and even from the post mortem report, it was clear that he died due to excessive drinking. The happenings of the night intervening 16.10.1989 and 17.10.1989 as stated by the claimants were denied in toto and the non-applicants

maintained that neither Dhan Singh ever took Mohan Singh along nor the tractor was sent to bring cement and iron nor Mohan Singh was sitting on the tractor nor died because of falling down and the trailer running him over. The non-applicants submitted that Mohan Singh expired at his house only for excessive consumption of liquor and such fact was specifically asserted by the brother of the claimant No.1 in the information supplied to the police on 17.10.1989; and that the information dated 19.10.1989 as referred by the claimants was not the 'first' information report and the same was in fact lodged as an afterthought and was mala fide. It was also pointed out that in criminal case No.266/1989 ultimately the court acquitted the non-applicant Dhan Singh with the finding that no such incident occurred. The non-applicants denied the deceased earning anything and asserted that he was only consuming liquor and was a burden on the family.

The non-applicant No.3 Shaitan Singh son of Nahar Singh, the alleged transferee owner of the vehicle in question, made a separate reply but again denied the entire occurrence as alleged and asserted that the deceased was always under the influence of liquor and he died due to excessive drinking and not due to any accident.

The Tribunal framed the following issues for determination of the questions involved in this case:

"1. क्या दिनांक 16.10.89 व 17.10.89 की दरमियानी रात में ग्राम डूडसी के पास ट्रेक्टर आर जे डब्लू 2652 द्वारा प्रार्थीगण द्वारा वर्णित कथित एक्सीडेंट मोहनसिंह के हुआ व उससे उसकी मृत्यु हुई ?

2. क्या प्रार्थीगण मृतक मोहनसिंह की मृत्यु के कारण कोई मुआवजा मांगने व पाने के अधिकारी है व यदि ऐसा है तो किस अप्रार्थी या अप्रार्थीगण से व कितना ?

3. अनुतोष क्या हो ?"

In oral evidence, the claimants examined Sukh Kanwar, the wife of deceased as AW-1, Manohar Singh, the younger brother of deceased who had lodged the aforesaid information report dated 19.10.1989 as AW-2, and Shambhu Singh, an alleged eyewitness to the incident as AW-3. The claimants also produced documentary evidence in the form of certified copy of FIR No.58/1989 dated 19.10.1989 as Ex.1, challan submitted by the police on the said report as Ex.2, post mortem report as Ex.3, site inspection report as Ex.4, site plan as Ex.5 and notice served upon the said Shaitan Singh son of Nahar Singh under Section 133 of the Motor Vehicles Act with his reply thereupon as Ex.6. In rebuttal, the non-applicants examined Dhan Singh the alleged driver of the vehicle in question as NAW-1, Shitan Singh son of Nahar Singh, the alleged transferee owner as NAW-2, and Chhail Singh, the alleged occupant of the vehicle in question as NAW-3 and also

produced certified copy of the judgment dated 09.01.1991 in criminal case No.266/1989 acquitting the non-applicant Dhan Singh as Ex. A/1.

The Tribunal proceeded to determine the core questions involved in the case in issue No. 1 about happening of the incident and found that AW-1 Sukh Kanwar and AW-2 Manohar Singh were not the eyewitnesses to the incident as found from the statement of Manohar Singh and so also from the report lodged by him (Ex.1). The Tribunal noticed the statement of AW-2 Manohar Singh that Mohan Singh and Chhail Singh accompanied Dhan Singh in the night and next day in the morning at about 4:00 – 4:30 a.m., Dhan Singh informed about indisposition of Mohan Singh and thereupon Manohar Singh with his mother and Devi Singh accompanied Dhan Singh in the jeep; and that they reached Bagra and found Mohan Singh unconscious who was taken to hospital where he was declared dead. The Tribunal further noticed the statement of Manohar Singh to the effect that next day Chhail Singh and Padma Ram divulged that Shaitan Singh had sent Dhan Singh, Padma Ram and Chhail Singh on the tractor to bring cement; that after loading, Dhan Singh was driving the tractor under the influence of liquor with Padma Ram and Mohan Singh sitting along and Chhail Singh sitting in the trailer; that Mohan Singh fell down about 20 paces before

Dudsi; and that Chhail Singh shouted for halt but the tractor was not stopped and Mohan Singh was crushed beneath. The Tribunal commented that this witness Manohar Singh has not proved the incident but according to him, Dhan Singh, Padma Ram and Chhail Singh were available in the tractor; and though Dhan Singh was opposite party but claimants have failed to produce Padma Ram and Chhail Singh in their evidence.

The Tribunal then examined the statement of AW-3 Shambhu Singh, the alleged eyewitness to the incident who asserted that he was following the tractor in question at about 12 midnight while driving another tractor belonging to one Shanker Purohit. According to him, Padma Ram and Mohan Singh were sitting on the offending tractor driven by Dhan Singh that was proceeding at the 'full'; that because of a pit, the tractor tilted, Mohan Singh fell down, and a tyre of the trailer ran him over. The said witness AW-3 Shambhu Singh asserted that he was following just 10-15 paces behind and noticing the incident, he stopped his tractor; that Mohan Singh was injured but he was not permitted to see him and, instead, was asked by Dhan Singh to go away; that Dhan Singh was under influence of liquor; that thereafter, he (the witness) went to his village Santhu and visited Dudsi 2-3 days later when he was informed of the incident leading to death of Mohan Singh;

and he had given such statement to the police also. The Tribunal found AW-3 Shambhu Singh unworthy of reliance for the reasons that his name was not stated in the information report Ex.1; that he was not cited as a prosecution witness in the criminal case; that he had asserted having made the statement to the investigating agency but no such statement was produced on record; and that his conduct was also suspicious for not stating the incident despite having noticed the same in the night and not accompanying the injured Mohan Singh to the hospital.

The Tribunal, then, examined the testimony of the witnesses produced by the non-applicants and found that NAW-1 Dhan Singh and NAW-3 Chhail Singh, both of them alleged by the claimants to be the eyewitnesses to the incident, have denied the occurrence altogether. The Tribunal also found that none of the parties have produced another alleged eyewitness to the incident, namely Padma Ram, though primarily the burden was on the claimants to produce him. The Tribunal also referred to the site inspection memo Ex.4 and site plan Ex.5 and found that no traces of the incident were found at the site. The Tribunal also examined the post mortem report Ex.3 wherein the police had given the information to the doctor that the victim Mohan Singh died due to 'alcohol intake' and found that there were only two injuries

on his body in the form of abrasions; and that the doctor had stated 'internal haemorrhage' to be the cause of death but it was not shown as to which injury led to such haemorrhage ? The Tribunal observed,-

> "प्रदर्श 3 पोस्टमोर्टम रिपोर्ट को भी देखा गया तो यह प्रकट हुआ कि पुलिस ने पोस्टमोर्टम कराने से पूर्व ही डॉक्टर को यह सूचना दी कि मृतक मोहनसिंह की मृत्यु एल्कोहल ग्रहण करने से हुई है । मृतक के शरीर पर मामूलीसी दो चोटें हैं जो रगड के रूप में हैं । डॉक्टर ने मृत्यु का कारण अत्यधिक आंतरिक रक्तश्राव होना बताया है । लेकिन यह नहीं बताया गया है कि यह अत्यधिक आंतरिक रक्तश्राव किस कारण से हुआ था । कौनसी चोट इस रक्तश्राव का कारण बनी, यह पोस्टमोर्टम रिपोर्ट से प्रकट नहीं होता है । इसलिए किसी भी दृष्टिकोण से इस मामले को देखा जाए तो मृतक मोहनसिंह की मृत्यु मोटर दुर्घटना के फलस्वरूप होना साबित नहीं है ।"

The Tribunal, therefore, held that the claimants have failed to establish that death of Mohan Singh was the result of any vehicular accident; and that it was not established that the non-applicant No.1 caused fatal injuries to Mohan Singh by driving the tractor RJW 2652 rashly and negligently. The Tribunal of course proceeded to quantify the loss for the claimants in issue No.2 at Rs.2,20,000/- but held them not entitled for any compensation in view of finding on issue No.1; and proceeded to reject the claim application.

Assailing the award aforesaid, learned counsel for the claimant-appellants strenuously contended that the Tribunal

has been in error in discarding the testimony of the independent eyewitness AW-3 Shambhu Singh who has proved the entire incident; that from the corroborative evidence including police investigation papers, it is apparent that the non-applicants have falsely put forward the story of consumption of liquor by the deceased Mohan Singh; and his death having occurred due to rash and negligent driving of the tractor in question, adequate compensation ought to have been allowed to the claimants, wife and minor child of the deceased. Learned counsel also submitted that the Tribunal has been in error in quantifying compensation only at Rs.2,20,000/- and for the deceased earning about Rs.20,000-25,000/- per annum in agriculture and being about 34 years of age, reasonable compensation with application of multiplier of 17 ought to have been allowed at least in the sum of Rs.3,60,000/-. On the other hand, learned counsel for the respondents supported the award impugned and submitted that AW-3 Shambhu Singh cannot be taken as an eyewitness in this case and the Tribunal has rightly rejected his testimony after thoroughly examining the entire record. Learned counsel submitted that the assertion on the part of AW-3 Shambhu Singh of having seen any such incident is falsified from the fundamental fact that he alleged having made statement to the police but he was not cited as a prosecution witness and no

copy of his statement, if there be any, under Section 161 Cr.P.C. has been produced. Learned counsel submitted that the Tribunal has rightly rejected the baseless claim application after proper appreciation of evidence and the award in question calls for no interference. Learned counsel for the claimants rejoined with the submissions that for reliability of the testimony of an eyewitness to the accident, it is not necessary that he should have been cited as a police witness; that anybody having seen the incident could depose in that relation in an enquiry before the Tribunal; and that there is no reason to discard the testimony of AW-3 Shambhu Singh.

Having given an anxious consideration to the rival submissions and having examined the entire record, this Court is clearly of opinion that the Tribunal cannot be faulted in rejecting the claim application and the present appeal remains bereft of substance.

Having examined the case set up by the claimants and having scanned through the entire material placed on record, this Court finds that in this case some remote doubts do appear about the cause of death of Mohan Singh; but the evidence has fallen much short of the proof of fundamental fact that he died due to the injuries sustained in an accident involving the vehicle in question. In fact, the material available on record does not make out even a reasonable

preponderance of probabilities that could lean in favour of any finding for the claimants. The Tribunal has appreciated and analysed the evidence in thorough detail and neither the conclusion reached by the Tribunal suffers from any perversity nor the view taken by the Tribunal suffers from any error of approach; and there is no convincing reason that could lead to dislodging of the finding of the Tribunal.

The case of claimants essentially hinges around the testimony of AW-3 Shambhu Singh but he appears to be a purely made-up witness. It is true that the testimony of an alleged eyewitness to the incident cannot be rejected merely for the reason that his name does not appear in police investigation and if otherwise reliable, testimony of a person could be accepted even if not cited as police witness; but in the present case, there are enough reasons, rather loopholes, for which the testimony of AW-3 Shambhu Singh does not inspire confidence. He was allegedly driving a tractor of one Shanker Purohit and was following the tractor in question at the relevant time. Neither the reason for his driving another person's tractor in the midnight has been stated nor even registration number of the said tractor has been stated; and he has admitted in cross-examination that his tractor was not carrying any goods. According to the said witness, Mohan Singh was known to him. If at all he knew Mohan Singh, had

seen him getting injured on being run over by a vehicle, and had noticed that the driver of the offending tractor was under intoxication, it sounds contrary to the normal human conduct that he would still leave the injured Mohan Singh in the company of, and at the mercy of, the drunk tractor driver Dhan Singh. It sounds further abnormal that he would not divulge the incident for 2-3 days to anybody; and would rather come to know about death of Mohan Singh only 2-3 days later upon visiting Dudsi. It is difficult to believe the words of AW-3 Shambhu Singh as correct statement of facts when his presence at the alleged scene of incident is doubtful; and when his conduct is not compliant with an ordinary and normal human conduct. Then, the said witness asserted that he made the statement to the police. In the context of his such assertion, it becomes relevant to notice that he has not been cited as prosecution witness in the said criminal case against Dhan Singh nor the challan (Ex. 2) makes any reference to him. From any angle or standpoint, testimony of this witness Shambhu Singh does not inspire confidence; and has rightly been rejected by the Tribunal.

So far the witness AW-2 Manohar Singh is concerned, his alleged first information report Ex.1 had itself been lodged on 19.10.1989 at 2:00 p.m; and it has been noted on the said report by the police that the informant stated the facts based

on the information allegedly given to him by Padma Ram and Chhail Singh. Significantly, the police further remarked on the said information report that in relation to death of Mohan Singh, Marg No.9/1989 was already registered; and on the basis of the report given by Manohar Singh, case was registered for offence under Section 304 IPC. Whatever Manohar Singh has stated about the incident is nothing but hearsay; he was admittedly not an eyewitness to the incident and his testimony cannot be relied upon for want of proper corroboration. What to say of corroboration, every other relevant piece of evidence available on record indicate squarely contrary to what has been suggested by Manohar Singh.

It is noticed that certified copy of the report made to the police on 17.10.1989 by the brother of the claimant No. 1 is available on record at page C13/5 but has been denied on behalf of the claimants and the said document has not been exhibited in evidence. Be that as it may, the said document, i.e., the report dated 17.10.1989, finds mention in the judgment dated 09.01.1991 delivered in Criminal Case No.266/1989 whereby the non-applicant No.1 Dhan Singh was acquitted after trial for offences under Sections 279, 304 IPC; and it has been noticed by the learned Magistrate that the report was made on 17.10.1989 at 9:00 a.m. by Devi Singh

(brother of claimant No.1 Sukh Kanwar) that deceased was being taken for treatment by his cousin Dhan Singh for his indisposition after excessive consumption of liquor and he died on the way. On this report, proceedings under Section 174 Cr.P.C. were under way but then the report was made by Manohar Singh on 19.10.1989 about the incident as noticed hereinbefore. The learned Magistrate has found in the said criminal case that all the relevant prosecution witnesses including PW-6 Manohar Singh (the same person, brother of the deceased, who has deposed as AW-2 in this claim case) turned hostile; and Manohar Singh denied even lodging of the report. The learned Magistrate has found that for all the witnesses including the complainant himself having gone hostile, no case was made out against the accused Dhan Singh that he caused fatal injuries to Mohan Singh while driving the tractor rashly and negligently. Though the observations of the criminal court may not be taken decisive for the purpose of findings in the claim for compensation but on the state of record in the present case, cumulative effect of all the facts deserves to be taken into consideration; and a fact that the accused Dhan Singh was acquitted fundamentally for the reason that the brother of deceased Mohan Singh, namely Manohar Singh, who has deposed in support of the present claim case as AW-2 and whose report dated 19.10.1989 has

been the very basis of this claim case, turned hostile in the criminal case and denied even lodging of report per force attracts attention while looking at preponderance of probabilities.

The claimants have asserted that Chhail Singh accompanied the deceased Mohan Singh right from his house to the vehicle in question and had seen the incident as an occupant of the trailer attached to the said tractor. Chhail Singh has deposed as NAW-3 and has categorically denied the incident altogether and there is nothing in his cross-examination that could discredit his testimony or create any doubt about veracity of his statement.

Another person named Padma Ram, allegedly having accompanied the deceased on the tractor in question, has not been produced in evidence. Two more relevant persons, Vachan Singh and Hukam Singh, said to be the cousins of deceased who had identified his body, as stated in post mortem report Ex. 3, have also not been produced. The non-applicants asserted that Devi Singh, brother of the claimant No. 1, stated in the first report made to the police that Mohan Singh expired due to excessive alcohol intake. The said brother of the claimant No. 1 has also not been produced. Withholding of these relevant persons by the claimants brings about more infirmity by way of adverse inference in their

otherwise precariously placed weak case.

Apart from the aforesaid, entire case of the claimants is effectively demolished and destroyed by the post mortem report Ex.3. As noticed above, it has been the consistent case of the claimants, whether stated in the claim application or as stated in the report lodged by Manohar Singh or as stated by Manohar Singh in his deposition before the Tribunal or as stated by the alleged eyewitness Shambhu Singh that 'Mohan Singh was thrown out of the moving tractor and wheel of the moving trailer ran him over that led to his death'. The post mortem was conducted at 11:00 a.m. on 17.10.1989; and the police gave information to the doctor about the deceased having expired due to alcohol intake. Vachan Singh and Hukam Singh, said to be the cousins of deceased identified the body. The report on the condition of the body shows two abrasions on the chest wall and the stomach contents said to be carrying the smell of alcohol. There is of course a mention of laceration about the size of 3 x ½ x ½ cms on the surface of right lobe of lever; but the same does not appear to be of an external injury. Of the two abrasions, one is of 5 x 1 cms size on left axillary region directed obliquely downward and another of 3 x 2 cms on right mammary region directed horizontally. However, this very report shows no any mutilated limb, and significantly, no bony injury. The size of aforesaid two

abrasions create wee bit of doubt about the cause of death but it is very difficult to co-relate and connect these injuries with the kind of incident alleged by the claimants, of the deceased having been crushed beneath the wheel of a loaded trailer after falling out of a moving tractor. As already noticed, according to the claimants, the trailer was loaded with cement and iron rods and the wheel of this trailer ran over the deceased. Such incident, obviously, would not have ended up merely in two aforementioned abrasions on the body of Mohan Singh. The Medical Officer has also reported that the cause of death was 'internal haemorrhage'; and looking to the indications about alcohol smell in the stomach contents, and about the condition of the lever as reported in the postmortem report, and in the overall fact situation of the case, it cannot be said that the non-applicants came out with an entirely unbelievable case that Mohan Singh expired for excessive liquor consumption.

Having examined the record, this Court is satisfied that the view taken by the Tribunal is based on proper appreciation of evidence and the finding on issue No.1 calls for no interference.

Though in view of the aforesaid, the question of quantum of compensation may not require dilatation any further, but it may be pointed out that even the quantum of loss

as suggested by the Tribunal appears to be rather excessive for the deceased had been allegedly earning about Rs.20,000-25,000/- per annum from agriculture and it has been admitted by the claimants in their evidence that agricultural land of the deceased was being got cultivated by his wife through others. The wife of the deceased has further admitted that her mother-in-law, i.e., mother of the deceased was alive. No reason has been assigned as to why mother of the deceased had not been joined as a party in this claim for compensation?

On an overall view of the matter, this Court is satisfied that no case is made out for interference in the award in question.

The appeal fails and is, therefore, dismissed. However, in the circumstances of the case, parties are left to bear their own costs.

**(DINESH MAHESHWARI),J.**

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